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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/608,047	06/27/2003	Gary Lester Chastine	9D-HR-19652	7923
7590	03/07/2005		EXAMINER ZEC, FILIP	
John S. Beulick Armstrong Teasdale LLP Suite 2600 One Metropolitan Square St. Louis, MO 63102			ART UNIT	PAPER NUMBER
			3744	
DATE MAILED: 03/07/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/608,047	<b>Applicant(s)</b> CHASTINE, GARY LESTER	
	<b>Examiner</b> Filip Zec	<b>Art Unit</b> 3744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 08 December 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☒ Claim(s) 4, 5 and 7 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 June 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Response to Arguments*

1. Applicant's arguments filed 12/08/2004 have been fully considered but they are not persuasive.
2. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the second fan of Peterson, selectively, via damper action (FIG. 7), controls the flow of air from the upper to the lower compartment (col 5, lines 9-10).
3. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

***Claim Objections***

4. Claims 4, 5 and 7 are objected to because of the following informalities:
- Claim 4 (line 2) recites the limitation "said lower compartment". Presumably, this should be - - said third compartment - -. Appropriate correction is required.
  - Claims 5 (line 3) and 7 (lines 1 and 2) recite the limitation "said damper" and "said duct fan". Presumably, these claims should depend on claim 2, for which there is proper antecedent basis. Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 2 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 3,232,071 to Wallenbrock et al. In FIG. 2, Wallenbrock teaches a refrigerator (10, FIG. 1), comprising a refrigeration compartment (22), a freezer compartment (21) adjacent said refrigeration compartment and a third compartment (15) adjacent said freezer compartment and separated from said refrigeration compartment and freezer compartment by a dividing wall (40) comprising a duct (45) extending through said wall, which contains a damper (62), a fan (27) and provides an airflow between said compartments, said freezer compartment comprising an

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evaporator (24) and said third compartment controllable in both refrigeration and a freezer mode (col 2, lines 66-72; col 3, lines 63-70).

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 3, 4, 5 and 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S.

Patent 3,232,071 to Wallenbrock et al., in view of U.S. Patent 5,758,512 to Peterson et al.

Wallenbrock teaches a refrigerator comprising a refrigeration compartment, a freezer compartment adjacent said refrigeration compartment and a third compartment adjacent said freezer compartment wherein said third compartment is controllable in both refrigeration and a freezer mode, substantially as claimed with the exception of stating that the evaporator housing contains an evaporator fan for circulating the air inside said compartment, having a secondary fan in the duct and a lower compartment being pulled out like a drawer. Peterson shows an evaporator fan (54, FIG. 1), a secondary fan (54) in a duct (see FIG. 3a) and a lower compartment (32) being pulled out like a drawer (see FIG. 1). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made from the teaching of Peterson to modify the system of Lee, by having an evaporator fan in order to circulate the air in the freezer chamber (FIG. 3a), adding a secondary fan in order to improve the

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flow control through the duct and a drawer compartment in order to improve the accessibility of the refrigerator.

9. Claims 8-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 5,551,252 to Lee, in view of U.S. Patent 5,758,512 to Peterson et al. Lee discloses applicant's basic inventive concept, a refrigerator system, comprising an upper compartment (15, FIG. 1) including an evaporator (17) and a fan (18) therein, both enclosed within a chamber (H) having a cover (19) with an inlet (21, FIG. 2) vent and an outlet (28) for a duct (80) containing a gate damper (51), which connects the upper compartment to a lower compartment, said lower compartment (32) separated from the upper compartment via a dividing wall (30) having a top and bottom surface, and having a supply conduit (80) which connects the upper and lower compartments and a secondary duct (75) for air communication between the two compartments when the damper is open, said fan circulating partially evaporative air when the damper is sealed (col 5, lines 17-28), substantially as claimed with the exception of having a secondary fan in the duct and a lower compartment being pulled out like a drawer. Peterson shows a secondary fan (54) in a duct (see FIG. 3a) and a lower compartment (32) being pulled out like a drawer (see FIG. 1). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made from the teaching of Peterson to modify the system of Lee, by adding a secondary fan in order to improve the flow control through the duct and a drawer compartment in order to improve the accessibility of the refrigerator.

***Conclusion***

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Filip Zec whose telephone number is (571) 272-4815. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Denise Esquivel can be reached on (571) 272-4808. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Filip Zec  
Examiner  
Art Unit 3744

  
**CHERYL TYLER**  
**SUPERVISORY PATENT EXAMINER**

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